

COMMENTS OF FEDERAL COMMUNICATIONS COMMISSION  
on S. 1886 Amendment  
(IN THE NATURE OF A SUBSTITUTE) TO BE PROPOSED  
BY SENATORS MOSS AND MURRAY - 86th CONGRESS

FCC 59-630  
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1. The Federal Communications Commission has the following comments to offer on the amendment to S. 1886 (in the nature of a substitute) to be proposed by Senators Moss and Murray, 86th Congress.

Section 1

2. The Commission concurs in Section 1 which is the same as our proposal embodied in S. 1886.

Section 2

3. On Section 2, the Commission prefers the proposal embodied in S. 1741. The following information is submitted to supplement our earlier justification for this proposed amendment. Our proposal and Senator Moss' amendment revolve around whether the statute should require that the actual operation of transmitting apparatus should be carried on only by persons holding an operator's license. The Commission thinks that it should have discretion in this matter. But of course that is a matter for the legislative policy of Congress itself. The statutory requirement that stations engaged in broadcasting shall be operated by a licensed operator can be stated:

- a. For all such stations; b. With a legislative exception only for stations engaged in rebroadcasting; or
- c. Not at all, leaving it to the Commission to prescribe particular circumstances in which licensed operators will be required. The Commission favors this last one for the following reasons:

4. The immediate purpose of the Commission's proposal to amend Section 318 is directly related to our consideration of the desirability of adopting rules under which low power television repeater stations operating in the VHF television band could be licensed. Briefly, Section 318 now requires that "The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder \* \* \*" provided, however, that this requirement can be waived under certain conditions except for "(3) stations engaged in broadcasting." (47 U.S.C. 318) The Commission is requesting that the discretion it now has with respect to operators for certain classes of stations be extended to include stations "engaged in broadcasting".

5. Although the immediate concern is with the low power television repeater type station, the case for discretion in this area with respect to an operator is equally valid for all classes of broadcast stations.

6. Prior to 1937 the Communications Act as well as its predecessor, the Radio Act of 1927, required that without exception actual operation of all transmitting apparatus be carried on only by a licensed operator. Section 318 was amended in 1937 to its present form whereby the Commission was given the power to waive the operator requirements except for the four categories mentioned, i.e., (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below 30,000 kc.

7. This 1937 amendment was adopted at the request of the Commissioners. In urging the relaxation implemented by the 1937 amendment of Section 318, the Commission stated that its purpose was to give the Commission discretion in certain instances to relax the absolute requirement of Section 318 \* \* \*." Further it was said, "The need for such discretion was brought to the attention of the Commission forcibly by an application of the Cruft Laboratory, Harvard University. A general experimental station had been licensed to that institution for several years for the purpose of making a continuous observation of the ionosphere \* \* \* Results of the operation were recorded automatically. There was no function which an operator could have performed in this connection other than to keep the station upon its proper frequency." Several other automatic types of operation were also mentioned in the Commission's request and it was further stated that "It is important to remember that control by the Commission over a station is not lost because it is automatically operated. The control over the license of the licensee remains to insure proper operation \* \* \*."

8. The Commission itself also suggested the exclusion of the four classes of stations from the waiver requirement, stating "These exceptions were carefully designed to avoid conflict with international agreements, to preserve safety, and to exclude stations operating with great power or on frequencies where considerable interference might be expected."

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The quotations in this paragraph are excerpted from a letter from Irwin Stewart, Commissioner, to Honorable Wm. P. Cole, Jr., House of Representatives, Washington, D. C., February 19, 1937.

9. It is our position now, that the tremendous strides which are acknowledged to have taken place in the electronic and radio field and the degree to which automation and safeguards can be implemented with respect to unattended equipment make groundless many of the fears of 1937 and earlier regarding the possible harmful effects of unattended operation. The initial statute requiring licensed operators at all radio stations dates back to the first days of radio and is based principally on the fact that early radio equipment could only be satisfactorily operated by a technician with some knowledge of its fundamentals as well as the ability to transmit and receive telegraph code.

10. The operator was necessary to insure (1) that the equipment accomplished the purposes for which it was intended i.e., communication and (2) that in its operation it did not unduly disrupt or interfere with other radio stations. In the present advanced stage of the art there is no question in our mind of the ultimate feasibility of unattended operation of all classes of broadcasting stations insofar as these two considerations are involved. The knowledge and state of the art fully encompasses the techniques necessary to safeguard unattended operation. This is not to say, however, that the Commission contemplates the immediate or even the eventual removal of the requirements for operators at all broadcasting stations. Rather, we are urging that the statutory restriction on the Commission's discretion in this area be removed. Certainly we have the confidence that this discretion would be exercised within the full meaning of the word and that unattended operation of any class of broadcast stations, including those with which we are immediately concerned, i.e., the television repeater stations, would not be authorized except under conditions in which all possible adverse effects of the unattended operation were fully considered and adequate provisions made to prevent such adverse effects.

11. In the version of the amendment to Section 318 that is now before the Congress in S. 1886, as amended, the Commission's suggestion that all broadcasting stations be removed from the excepted category has been modified to remove only the television repeater type stations with which we are, as indicated above, immediately concerned. Passage of the amendment in this form would, of course, meet our immediate concern. There are, however, other considerations concerning operators with which we are constantly confronted. Therefore, without attempting at this time to resolve or to decide whether further relaxation of operator requirements will be adopted, we again urge that this is an area in which the Commission should be permitted discretion and ask for consideration of the amendment in its original form.

### Section 3

12. Section 3 conforms to the Commission's legislative proposal as embraced in S. 1739 except that the amendment to S. 1886 would have premature construction provisions applicable to community antenna television systems (hereinafter referred to as CATV). In connection with sections 6 and 7 of the Amendment to S. 1886 we discuss our views on community antenna TV systems being licensed by the Commission.

13. The Amendment to S. 1886 permits the Commission to waive the requirement of premature construction for stations constructed before the enactment of the Act. The Commission's proposal as set forth in S. 1739 had set the date as "before January 1, 1959." The Commission has no objection to this provision of the Amendment.

### Section 4

14. The Commission has no objections to Section 4. It conforms to our proposal as embodied in S. 1886.

### Section 5

15. The Commission is in accord with Section 5 which is consistent with our proposal as provided in S. 1886. We prefer, however, to suggest that the word "regular" be eliminated from the first line of proposed Section 5. Our proposal and the Amendment refer to the licensee of a regular television broadcast station. Since "regular" is not otherwise defined we now feel it wiser to omit it.

### Sections 6-7

16. We turn next to Sections 6 and 7 of S. 1886, as amended, and to that portion of Section 3 thereof which concerns CATV's. Section 6 would make operation of a CATV unlawful except (1) in accordance with the applicable provisions of the Communications Act of 1934, as amended (these are not specified), and (2) under a license issued by the FCC. Section 7 sets out findings which the Commission must make before authorizing CATV's, television broadcast repeater stations or microwave transmission facilities serving either of such operations. Section 3 would except CATV's and repeaters from the statutory prohibition against licensing certain types of facilities constructed prior to the issuance of a construction permit.

17. Insofar as it concerns CATV's Section 7, among other things, would preclude granting the requisite license to either an existing or proposed system unless the Commission finds that the authorization "will not adversely affect the creation or maintenance of a [television] station which will originate local television programs...." Section 7 would also preclude licensing a television broadcast repeater station, or a point-to-point microwave transmission facility serving either a CATV system or a television repeater station, unless the same finding is made.

18. It thus appears that one of the major objectives of the Bill is to invoke Federal Regulatory powers to bar the dissemination of television broadcast programs to members of the public through the use of CATV's, repeater stations, or microwave facilities serving either of these in any case where the use of such devices or systems would exert adverse impact on any existing regular television broadcast station or on the possibilities for the future establishment of such a regular television broadcast station.

19. As purveyors of television programs, both CATV's and repeater stations exert an impact on any television station serving the area to the extent that members of the public who might otherwise be watching programs broadcast by local or nearby stations watch, instead, programs disseminated by CATV's or repeaters. The audience of the regular station is thereby reduced. This, in turn, may be expected to affect to a greater or lesser degree, the ability of the local regular station to secure quality programs and to obtain advertiser support, which is their sole source of revenue. It also follows that the availability, in a particular city or area, of television programs provided by repeaters or CATV's would have a probable bearing on decisions by entrepreneurs concerning the establishment of a new local television station. Thus, if "adversely affect" were construed in this sense, virtually all existing or proposed repeaters and CATV's systems would fall within the ban of Section 7.

20. If, on the other hand, the words "adversely affect" were construed to mean only adverse impact so severe that the existing or proposed CATV or repeater would necessarily preclude the continued operation of a regular television broadcast station or preclude the establishment of a new regular television broadcast station serving the community or area, it would, in the considered opinion of the Commission, be extremely difficult in most cases to make such findings on an adequately supported basis. The reasons are set out at length in the attached copy of the Commission's Report and Order adopted April 13, 1959, in its docketed inquiry into the impact of community antenna systems, TV translators, "TV satellite stations", and TV "repeaters" on the orderly developments of television broadcasting (FCC Docket No. 12443).

21. Under a third possible construction the words "adversely affect" may be interpreted as calling for a finding by the Commission that an existing or proposed CATV or repeater station (or a microwave facility serving either) would exert so strong an adverse impact on existing or possible future regular television broadcast stations that the probability or the likelihood of continued service from an existing regular station or of establishing a new one would be seriously jeopardized. While it may be possible to formulate such a construction of the bill, the Commission believes that, in practice, the severe difficulties that would be encountered in making sound and adequately based findings under this interpretation would be substantially similar to those involved under the other possible interpretations noted above. It has already been pointed out that some "adverse effect" arising from the diversion of audience from regular television stations is most probably demonstrable in all cases. Weighing and deciding the degree to which existing or new CATV systems or repeaters would be likely to foreclose the possibilities for continued operation of a regular television station or the future establishment of a new one, is subject to much the same difficulties as attach to an outright determination that the repeater or CATV system would necessarily destroy or preclude opportunities for service from regular stations.

22. As we pointed out in our Report and Order of April 13, 1959, numerous circumstances -- including some imponderables -- determine the success or failure of existing television stations and the probabilities for the success or failure of new stations. These factors include not only the numbers of television services locally available but also the size and nature of the market, the supply and quality of programs, the extent of local, regional and national advertiser support, and related factors. They also include the competence, energy and imaginativeness of management, the amount of capital available, and numbers of other factors which in one degree or another affect success or failure of station operation. These circumstances illustrate and underscore the difficulties attaching to the process of making findings as to adverse impact which, under S. 1886, would be decisive in determining whether to authorize the continued operation of television repeaters and CATV systems and whether to authorize new ones.

23. Apart from the difficulties encountered in making findings requisite /under Section 7, the Commission notes that the bill appears to assume that in every case involving a choice between them, rendition of television service by regular television broadcast stations is preferable to the provision of program services by repeaters or CATV'S. This question was at issue in the Commission's formal Inquiry on this subject.

In reviewing the facts, the Commission was not persuaded that this assumption would necessarily hold in all cases. In a typical case CATV systems and repeaters are able to provide program services otherwise unavailable to the local community. This is because CATV'S and repeaters have usually been established in the smaller communities which lack full choice of nationwide and other television program services. Thus, they have been able, to considerable extent, to supplement the program fare which a local television station is in a position to offer. Since an ultimate objective of a television allocation plan is the provision of as many program choices as possible to as many members of the public as possible, it may not hold in all cases that the overriding public interest would necessarily be served by protecting a present or possible future regular television station from adverse competitive impact exerted by services able to offer a wider program choice.

24. In making this comment the Commission does not minimize the undoubted value to any community of a local television outlet, which can be provided by a regular television station, but is not furnished by repeaters or, in the usual case, by a CATV. In formulating and implementing spectrum allocations for all the broadcast services, the Commission has constantly sought to maximize the opportunities for the establishment of local stations providing means of local expression in as many communities as possible. Owing to the relatively high cost of constructing and operating television stations it has not been so far possible to establish local television stations in as many communities as have radio stations. Moreover, numbers of television stations in the smaller communities have experienced varying degrees of financial difficulty, whether or not parts of their service areas were served by repeaters or CATV's. In many cases television stations in the smaller communities, although they are able to provide a local TV outlet, have not been in the position to furnish a program service comparable with that made available by stations in the larger cities, which have been brought to some smaller communities by repeaters and CATV's. For this reason the question of where the public interest lies in any given community as between a station capable of serving as a local outlet and another form of service capable of providing a wider range of program choice should perhaps not be determined with sole reference to the advantages of service through a local regular television station. It may be relevant to note that local radio service is to a considerable extent utilized as a broadcast medium of local expression, and that the smaller communities are not wholly dependent upon television stations for a local broadcast medium. It would appear that S. 1886 would place the entire emphasis on economic protection to a local television station on the premise that in all cases the local outlet should be protected by barring the licensing of repeaters or CATV's which exert an adverse competitive impact on the station, despite the countervailing circumstance that in many cases the repeaters or a local CATV would be able to provide a more extensive program service and a wider range of program choice than the local station.

25. Apart from these basic considerations, should Congress decide as a matter of public policy that existing and future television stations should be protected, as under S. 1886, from adverse competitive impact exerted by television repeaters, CATV's and microwave facilities systems serving either, it would appear desirable to amend the text of the Bill so as to clarify the applicability to CATV's of portions of the Communications Act not specified in the proposed amendments to Sections 301 and 307(b). It has not been possible in the short time available prior to submission of these comments (in time for a hearing scheduled on June 30, 1959) to make a complete study of this, but it may be helpful to point out one illustration of the problem. Section 6 of the Bill would subject CATV's to the Commission's licensing powers by amending Section 301. However, a number of Sections of the Act which specifically govern the Commission's exercise of its licensing powers refer expressly to "station licenses". Examples are Sections 308, 310, 311 and 312. The definition of "station" in Section 3(k) of the Act does not clearly embrace CATV's, since the definition refers expressly to a "station equipped to engage in radio communication or radio transmission of energy". A CATV system provides programs by means of wire transmission rather than radio transmission.

26. The Commission notes, additionally, that making the requisite finding as to adverse effect in authorizing microwave facilities may not be necessary since, under S. 1886, as amended, the authorization of a TV repeater or CATV would be subjected to the same requirements concerning a finding of adverse effect on regular television stations whether or not the repeater or CATV used microwave facilities. Thus, the finding as to the repeater or CATV would suffice to determine the issue.

27. In the time available for the preparation of these comments the Commission has not been able to restate in detail the numerous factors bearing on the desirability of regulating the entry into the field of television repeaters and CATV's pursuant to the requirements of Section 7 of the Bill. These matters are, however, set out at length in the attached copy of the Commission's Report and Order in Docket No. 12443. The information and the analyses contained therein are, in the Commission's opinion, directly relevant to the proposals contained in the Bill. If additional views are desired on any particular aspects of the complex problem with which the Bill is concerned, the Commission will be glad to comment further in answer to questions which may arise in the course of hearings held on the Bill, or in writing, if desired.

Adopted: June 29, 1959.

Attachment.